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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO HEADQUARTERS**

UNITED STATES OF AMERICA, ex )  
rel. SEHGAL, *et al.* )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GILEAD SCIENCES, INC., *et al.*, )  
 )  
Defendants. )

Case No. C 11-2044 MEJ

**UNITED STATES' NOTICE OF ELECTION  
TO DECLINE INTERVENTION;  
[PROPOSED] ORDER**

**FILED UNDER SEAL**

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

The undersigned government attorney has been advised by a committee representing the named states that the states of California, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana,

**FILED**  
**FEB 4 - 2012**  
**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 Louisiana, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New  
2 Mexico, New York, Oklahoma, Rhode Island, Tennessee, Virginia, and Wisconsin, and the  
3 District of Columbia also decline to intervene in this action.

4 Although the United States declines to intervene, it respectfully refers the Court to 31  
5 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United  
6 States; providing, however, that the “action may be dismissed only if the court and the Attorney  
7 General give written consent to the dismissal and their reasons for consenting.” Id. The United  
8 States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the  
9 United States only has the right to a hearing when it objects to a settlement or dismissal of the  
10 action. U.S. ex rel. Green v. Northrop Corp., 59 F.3d 953, 959 (9th Cir. 1995); U.S. ex rel.  
11 Killingsworth v. Northrop Corp., 25 F.3d 715, 723-25 (9th Cir. 1994).

12 Therefore, the United States requests that, should either the relator or the defendants  
13 propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the  
14 United States with notice and an opportunity to be heard before ruling or granting its approval.

15 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all  
16 pleadings filed in this action be served upon the United States. The United States also requests  
17 that orders issued by the Court be sent to the government's counsel. The United States reserves  
18 its rights to order any deposition transcripts and to intervene in this action, for good cause, at a  
19 later date. See 31 U.S.C. § 3730(c)(3).

20 Finally, the United States requests that the Court unseal: (1) the relator's Complaint, (2) the  
21 scheduling order, (3) this Notice of Election to Decline Intervention, with (proposed) Order  
22 lifting the seal, and (4) all other matters occurring in this action after the date the Court enters the  
23 unsealing order. The United States also requests that all other contents of the Court's file in this  
24 matter (including, but not limited to, any applications filed by the United States for extensions of  
25 the sixty-day investigative period, any applications for partial lifting of the seal, and any orders  
26 previously entered in this matter) remain under seal and not be made public or served upon the  
27 defendants.


Respectfully submitted,

STUART F. DELERY  
Principal Deputy Assistant Attorney General

MELINDA HAAG  
United States Attorney

Dated: January 28, 2013

By:

  
SARA WINSLOW  
MELANIE L. PROCTOR  
Assistant United States Attorneys  
Attorneys for the United States of America

**[PROPOSED] ORDER**

The United States and the states of California, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Rhode Island, Tennessee, Virginia, and Wisconsin, and the District of Columbia having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), IT IS HEREBY ORDERED that:

1. The scheduling order, the Complaint, this Order, and the accompanying United States' Notice of Election to Decline Intervention are hereby unsealed.

2. The relator shall serve the Complaint on defendants.

3. Any applications and/or declarations that have been filed under seal by the United States for an extension of the sixty-day investigative period or for any other reason shall remain under seal and not be made public or served upon the defendants.

4. The seal shall be lifted as to all other matters occurring in this action after the date of this Order.

5. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time.

6. All orders of this Court shall be sent to the United States.

1           7. Should the relator or the defendants propose that this action be dismissed, settled, or  
2 otherwise discontinued, the Court will provide the United States with notice and an opportunity  
3 to be heard before ruling or granting its approval.

4           IT IS SO ORDERED.

5  
6 Dated: 2/4/2013

  
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8           MARIA ELENA JAMES  
9           United States Magistrate Judge  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

**UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION;  
[PROPOSED] ORDER**

to be served this date upon the persons indicated below at the addresses shown:

John F. Hyland  
RUKIN, HYLAND, DORIA & TINDALL, LLP  
100 Pine Street, Suite 2150  
San Francisco, CA 94111

Brian P. Kenney  
Brian P. McCafferty  
Kenney & McCafferty  
1787 Sentry Parkway West  
Building 18 Suite 410  
Blue Bell PA 19422

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**BY FIRST CLASS MAIL** by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

☐

**CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

☐

**BY PERSONAL SERVICE (BY MESSENGER):** I caused such envelope to be delivered by hand to the person or offices of each addressee above.

☐

**BY FACSIMILE (FAX):** I caused each such document to be sent by facsimile to the person or offices of each addressee above.


☐

**BY E-MAIL:** I caused each such document to be sent by e-mail to the person or offices of each address above.

☐

**BY FEDERAL EXPRESS**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed January 28, 2013 at San Francisco, California.

  
YVETTE BAIRD  
Supervisory Legal Assistant